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South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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ISSUES FOR 1998

NOTE: The following is a list of some of the major issues anticipated for the 1998 legislative year. These issues were identified and summarized with the assistance of House committee staff. The list is not exhaustive.

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

Community Health & Safety Act

Industrial or other facilities desiring to make new outlets, or to increase the quantity of existing outlets for the discharge of sewage, industrial or other solid or hazardous wastes into the air or waters of this state must have a permit issued by the Department of Health and Environmental Control (DHEC). Presently, DHEC is not authorized to consider the environmental compliance history of an applicant in deciding whether to grant, renew, or revoke an environmental permit, or in granting approval for change of ownership or controlling interest in an existing facility.

H.4318 (Rep. Neal) gives DHEC the authority to require an applicant to file a disclosure statement detailing past environmental violations, permit revocations, and other criminal or civil actions for environmental violations within the past five years. If the disclosure statement indicates multiple past violations, DHEC may conduct a background check with assistance from the State Law Enforcement Division (SLED). If DHEC finds that an applicant has a history of violations in other states, has concealed a material fact in applying for the permit, has a conviction for a crime involving moral turpitude, or if DHEC determines it is not in the best interest of health and safety or the environment, the request for a permit may be denied.

H.4318 is pending in House Agriculture, Natural Resources, and Environmental Affairs Committee

Environmental Audit Privilege

An environmental audit is a voluntary, internal evaluation of a facility or activity of a facility regulated under environmental law. Environmental audits are designed to identify and prevent environmental compliance violations. Audits are conducted by the owner, operator, facility official, or other person or contractor designated on behalf of the facility. Environmental audit reports and persons who conduct these reports are privileged. Audits are protected from discovery and from being admissible as evidence in a legal action unless the privilege is waived, or an administrative law judge or a court in a criminal proceeding determines that revoking the privilege is justified by law. This privilege was established to encourage truthful

reporting and compliance with environmental laws by providing limited protection of audit findings and other audit communications.

If an agency or member of the public requests information relating to an environmental audit, a company or facility may claim the privilege and refuse to turn over the information. H.4296 (Rep. Neal) provides that information contained in an environmental audit is subject to disclosure under the Freedom of Information Act.

H.4296 is pending in House Agriculture, Natural Resources, and Environmental Affairs Committee.

Marine Fishery Laws

The Department of Natural Resources (DNR) proposes a complete revision of the laws governing commercial and recreational saltwater fishing. Inadequate, ambiguous, or unenforceable laws are rewritten or eliminated. DNR held public hearings and produced a draft document detailing the proposed changes and revisions, which has been received by Legislative Council. The following five proposed additions and revisions are selected from DNR's January 8, 1998 summary of the 60-page draft document entitled "Marine Resources."

1. Provisions that apply only to certain geographical areas are removed. Fishing activities in specified waters and counties are examples of such provisions.
2. DNR retains jurisdiction over fishing in saltwater and over anadromous resources in freshwater. (Anadromous fish migrate between coastal waters and the sea. American Bass and Striped Bass are examples of such fish). The agency continues to have the authority to promulgate regulations for fishery management issues not specified under the Administrative Procedures Act. Matters which DNR must consider in promulgating regulations are expanded.
3. Resident and non-resident individual commercial fisherman licenses and fees are instituted. These licenses allow a fisherman to sell what he catches.
4. A civil process determines penalties for licensed commercial fishermen, strikers, and seafood dealers who violate marine resource laws. Unlicensed commercial fishermen, recreational fisherman, and others remain subject to criminal prosecution. Criminal cases brought under marine fishery laws fall under the jurisdiction of the magistrate's court regardless of the amount of potential fines.
5. Licensing is simplified by eliminating the vessel licenses, trawler captain license, and the land and sell license. A clear delineation is made between commercial and non-commercial fishing activities and gear for management and enforcement purposes.

Additional changes are proposed dealing with shellfish, anadromous fisheries, recreational harvesting, seafood and market, fishing equipment, and vessels. Violations and penalties are also modified.

This proposal is expected to be introduced during the 1998 legislative session.

Game Zone Consolidation

Sportsmen have often complained that South Carolina's game laws are far too complex. H.3902 (Rep. Sharpe) was introduced to simplify and consolidate these laws and to further provide for the protection of game. This bill consolidates the eleven present game zones into four zones. Since game laws must be established by game zone, consolidating the eleven game zones into four would result in a shorter deer season for most counties. Public hearings revealed that sportsmen did not want to change the length of the deer season. The final recommendation is to combine our eleven game zones into six zones so that the length of all deer seasons remains the same. H.3902 consolidates many statewide statutes rather than having separate laws for each game zone.

H.3902 is pending in House Agriculture, Natural Resources and Environmental Affairs Committee

Hunting From Public Roads

H.3136 (Rep. Sharpe) prohibits the hunting or shooting of any game from a public road or public right-of-way. The bill also makes it illegal for anyone to supervise, release, catch, or retrieve a dog on a public right-of-way, paved public road, or railroad right-of-way, unless that person's weapon is unloaded and locked in a case, trunk of a vehicle, or a toolbox. These provisions do not apply to law enforcement officers and military personnel performing their duties, or to persons who own or have permission to hunt on land adjacent to the right-of-way.

Persons convicted of violating these provisions are subject to fines of up to five hundred dollars or imprisonment for up to thirty days. This bill also provides for a penalty of up to five thousand dollars and imprisonment not to exceed one year for any shooting violation that results in property damage or personal injury.

H.3136 is pending in House Agriculture, Natural Resources, and Environmental Affairs Committee

EDUCATION AND PUBLIC WORKS

"PASS" Commission Report - Recommendations/Legislation

According to the National Conference of Legislatures' (NCSL) *State Legislatures* magazine, Democratic pollster Peter Hart and Republican pollster Frank Lunz say that education will be the Number 1 issue for voters this year. Also, chairs of education committees and staff confirmed that education is the big issue of the year when they responded to a recent NCSL survey that received 104 responses from 40 states and territories. Respondents in all but six states said education will be a high priority this year.

By Executive Order issued in January 1997, Governor Beasley established the *Performance and Accountability Standards for Schools* (PASS) Commission and instructed the commission to review public school academic standards and accountability. The ten recommendations outlined for school accountability in the PASS Commission's report promise to generate much discussion during the 1998 session. The recommendations encompass: measuring student achievement; publishing uniform performance indicators; adopting detailed, specific content standards by core subject and grade level; assessing the content standards; issuing an annual report for each school; establishing a multifaceted recognition program; implementing a transformational plan to assist poorly performing schools; reviewing current statutory provisions to clearly define the academic purposes of schools; monitoring and providing oversight of a system of accountability; and initiating and maintaining an aggressive public relations campaign for parental and community support of education.

The Speaker of the House appointed an *ad hoc* committee to develop legislation based on the specifics of the PASS Commission's recommendations. The purpose of that legislation, which is slated for introduction at the beginning of the 1998 legislative session, will be to create a system of accountability for public education which focuses on equipping students with a strong academic foundation by emphasizing teaching and learning.

Special License Plates

An *ad hoc* committee composed of members of the House Education and Public Works Committee studied the proliferation of special license plates for motor vehicles and their impact on highway revenue. The ultimate aim of the *ad hoc* committee is that the revenue generated from special license plates will equal or exceed the expense of producing and distributing these plates. The committee recently concluded its work and prefiled H.4346 (Rep. Stuart), which adds sections to the *SC Code of Laws* providing requirements that must be met (See bill summary included in "Prefiled Bills" section of this Update) before the Department of Public Safety (DPS) produces and distributes a special license plate created by the General Assembly.

Graduated Driver's License Program

On the last day of the 1997 legislative year, the General Assembly passed S.60 (Sen. Holland), which proposed, among other items, the creation of a Graduated Driver's License Program. The Governor, however, has not signed this bill into law. Support for the bill during the 1997 legislative session, coupled with the reduction in motor vehicle crashes involving young people in those states having such programs, suggests that this topic may be revisited if S.60 is not enacted.

JUDICIARY

Omnibus Highway Safety Act

H.3350 (Rep. Wilkins) contains several amendments to the current law concerning Driving Under the Influence offenses. The first section of the bill sets forth what is commonly known as "Zero Tolerance" for minors. "Zero tolerance" under this bill provides for the suspension of the drivers license of a person under 21 years old with an alcohol concentration of 0.02% or more who is determined to be operating a motor vehicle. If a person refuses to submit to testing, or if the test indicates a BAC (blood alcohol concentration) of .02% or more, DPS (Dept. of Public Safety) must suspend the drivers license for 6 months or, if the person has been convicted of DUI or DUS within the previous 10 years, then for one year. No tests may be administered unless the person has been informed of the right to refuse the tests and of the automatic suspension period, as well as the suspension period if the person has a BAC of .02% or greater.

Under the provisions of an amendment passed out of subcommittee, DPS must serve an order of restriction which limits the person's privilege to drive to and from work or place of education if the test indicates a BAC of .02% or greater, or if the person refuses to be tested. The amendment has provisions for a person to apply for a restricted driver's license, and sets forth an administrative review and appeals process.

The proposed amendment also establishes an administrative license revocation procedure (commonly referred to as "ALR") which is the administrative suspension of the license of a person (21 or over) who refuses to be tested or has an alcohol concentration of 0.15% or more. The period of suspension for driving with an alcohol concentration of 0.15% or more is 90 days. Under current law, a person must be convicted or plead guilty or *nolo contendere* for violation of the DUI statute before his license is suspended.

Finally, the amendment addresses videotaping of breath testing and field sobriety testing. This is done through the implementation of a grant program to supply all law enforcement vehicles and testing rooms with video cameras. The bill sets forth various procedural requirements such as the admission of the video tapes in court.

This bill was addressed by the subcommittee late in the 1997 session and will be before the full committee in January of 1998.

Advisory Sentencing Guidelines

H. 3842 (Rep. Wilkins) extends the provisions of Truth in Sentencing to all crimes in South Carolina by requiring that all offenders serve a minimum of 85% of their sentence. Current law provides for Truth in Sentencing for those offenses with maximum possible penalties of twenty years or more.

Under the provisions of this bill, a person convicted of a crime and sentenced to the Department of Corrections is ineligible for early release, discharge, or community supervision until the prisoner has served 85% of the actual term of imprisonment.

The bill also establishes Advisory Sentencing Guidelines for all offenses with maximum possible penalties of one year or more. Generally, the Guidelines recommend longer prison sentences for more serious and violent offenders while recommending community punishments for less serious offenders. The bill states that the court should consider Advisory Sentencing Guidelines when determining the appropriate sentence for applicable criminal offenses. The Sentencing Guidelines Commission is authorized to promulgate regulations concerning the Guidelines.

The bill also increases by five years the maximum penalty for various offenses, including criminal sexual conduct, carjacking, arson, and committing a lewd act on a minor.

This bill will be discussed and given priority by the Criminal Laws Subcommittee in the beginning of the session.

Abolishing Office of Secretary of State

S. 632 (Senate Judiciary Committee) a proposed constitutional amendment, and **S. 604** (Sen. Rose), a bill amending the Code, would abolish the office of Secretary of State and put the different functions and responsibilities of that office with departments such as the Attorney General's office, the Department of Revenue, and the Governor's office. **S. 632** is in the Constitutional Laws Subcommittee, while **S. 604** is up for second reading on the House Calendar.

Removing Marriage Ban from Constitution

H. 4304 (Rep. Inabinett) is a constitutional amendment that would delete the language from the State Constitution which prohibits marriage between Caucasian and African-American persons. Such prohibitions were declared unconstitutional by the US Supreme Court in the 1967 case *Loving v. Virginia*.

Appointed Special Purpose Districts' Authority to Tax

This issue arises because of a recent Supreme Court ruling that holds an appointed special purpose district cannot constitutionally impose taxes because the taxing power may only be exercised by a body directly elected by the people. The Supreme Court's decision applies

prospectively, beginning Dec. 31, 1999, to allow the General Assembly an opportunity to address the problem. There are over 500 special purpose districts in the state providing a variety of services in their particular districts, including water and sewer service, recreation, and fire protection. The number of districts with appointed boards is now under study.

Magistrate Study Committee and Recommended Reforms

Magistrates handle more cases than any other level of court and the last comprehensive legislation concerning the magistrate's court system passed in 1988. A joint committee has been meeting for 1 ½ years studying the jurisdiction, number of available positions, location, qualifications, continuing education and certification requirements, compensation and other issues concerning the magistrates' role in the unified judicial system. This committee's recommendations to the General Assembly are included in H.4378 (Rep. Wilkins). This bill would enact "The Magistrates Court Reform Act of 1998" (a summary of this legislation is in the pre-filed bill section of the Update).

S.C. Property Rights Act

H. 3591 (Rep. Harrison), entitled the South Carolina Property Rights Act, is designed to protect the rights of private property owners. The bill is currently in the Senate Judiciary Committee. The House made significant changes to the original bill before sending it to the Senate.

The amended bill creates a new cause of action for a property owner who is 'inordinately burdened' by government action affecting his property. The term 'inordinate burden' means that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is unable to attain the reasonable, investment-backed expectation for the existing use of the real property.

Under the provisions of the bill, a property owner seeking relief must submit an appraisal to the governmental entity demonstrating the loss in the value of the property because of the governmental action. This appraisal must be presented to the governmental entity at least 180 days before the property owner files an action seeking relief. During this 180 day period, the governmental entity is required to make a written settlement offer, which may include the issuance of a variance, purchase of the property by the government, or several other options. If the owner does not accept the settlement offer, the governmental entity must issue a 'ripeness decision' identifying permissible uses for the property.

If the property owner rejects both the settlement offer and the ripeness decision, the property owner may file a claim for compensation in circuit court. The circuit court determines whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether considering the settlement offer and ripeness decision, the governmental entity or entities have inordinately burdened the real property. If the property is determined to be inordinately burdened by the government action, the court decides the percentage of responsibility for each governmental entity, and a jury determines the amount the property owner must be compensated. The jury must calculate the fair market value of

the unburdened property and subtract the fair market value of the property as inordinately burdened (and considering the settlement offer and the ripeness decision) to arrive at a compensation figure.

The property owner is entitled to reasonable attorney fees and costs if the owner prevails and the court determines the settlement offer and the ripeness decision were not bona-fide offers which would have resolved the claim. The governmental entity is entitled to recover reasonable costs and attorney fees if the governmental entity prevails in the action and the court determines that the property owner did not accept a bona fide settlement offer, including the ripeness decision, which would have resolved the claim fairly.

The amended bill further states that the cause of action created by this new chapter does not rise to the level of a taking under constitutional law and should not be construed under that case law. Claims must be presented to an entity within one year after a law or regulation is applied to the property at issue, and no cause of action exists for any law or regulation enacted or adopted on or before July 1, 1997.

Affirmative Action Legislation

H. 4115 (Rep. Limbaugh) prohibits the State of South Carolina or any of its political subdivisions from using race, sex, color, ethnicity, or national origin as a criterion for either discriminating against or granting preferential treatment to any individual or group in the operation of the State's system of public employment, public education, or public contracting. The bill states that this language should not be construed to prohibit a public agency from obeying a court order requiring the consideration of racial, ethnic, national origin, gender, or religious characteristics to remedy the effects of its own past discriminatory practices.

The bill was passed by the House Judiciary Committee and is currently up for second reading on the House Calendar.

Shortening the Session

The House has passed a joint resolution, **H.3041** (Rep. Wilkins), amending the State Constitution to allow the General Assembly to convene the second Tuesday in February during odd numbered years (currently the General Assembly begins each legislative year on the second Tuesday in January). The change would provide time for legislative committees to meet and begin debating legislation before the start of the session. This measure also requires the Senate to meet in an organization session in odd-numbered years to elect officers and prepare for the regular session. **H.3041** is currently in the Senate Judiciary Committee.

H.3042 (Rep. Wilkins) shortens the legislative session by scheduling the *sine die* adjournment date of the General Assembly on the second Thursday in May. Currently, *sine die* adjournment occurs on the first Thursday in June. **H.3042** is currently in the Senate Judiciary Committee.

LABOR, COMMERCE AND INDUSTRY

Electrical Industry Restructuring

There are efforts underway on both the state and federal levels encouraging fundamental restructuring of the electric utility arena. Present trends can be directly traced to the comprehensive Energy Policy Act passed by Congress in 1992. Among a great many other changes, the 1992 EP Act brought competition to the wholesale trade of electricity which utilities conduct amongst themselves. While revising the wholesale market, the federal act specifically refrained from affecting a utility's retail sale of electricity to its customers. The federal act declared that these retail sales remain under the regulatory authority of state and local governments. Since 1992, many states have shown interest in exerting that authority by introducing competitive market forces into the retail sale of electricity. Such legislative initiatives mark a fundamental shift away from the system of regulated monopolies which has characterized the electrical power industry for most of its history in this country.

Traditionally, a retail consumer of electricity buys power from the utility which has the exclusive authority to sell within his geographically-defined service area. Over the past two years, ten states have passed legislation to restructure this system of regulated monopolies by allowing retail consumers to choose their provider of electricity. Under such restructuring, the electrical industry comes to resemble the current long-distance telecommunications market, where a consumer chooses among the many providers which vie for his business. Competition involves a process termed "retail wheeling." That is, when a consumer selects a provider of electricity other than the native utility which services his geographic area, the native utility must transmit the power purchased from the other provider through its transmission lines (i.e. "wheel" the power through) to the customer.

Large businesses and industries with factories which consume large amounts of electrical power have been the most vocal proponents of retail wheeling. For such electricity-intensive businesses, negotiating even small rate decreases can produce substantial cost savings. Such savings could be translated into more jobs, expanded investments in the community, and lower costs for the consumer. Many smaller, residential consumers of electricity have also expressed an interest in shopping a re-regulated market with the aim of lowering power bills. On the other hand, investor-owned utilities point to the issue of "stranded costs." Stranded costs are the capital improvements in electrical generation and transmission which have been feasible for utilities to make in a marketplace where profits and service areas are guaranteed, but, which would not benefit a utility under a restructured competitive market. A discussion of restructuring the electrical industry often revolves around the question of how utilities can be fairly reimbursed for the improvements they have made in our electrical power grid. Also at issue is whether the electrical system will remain as reliable under a competitive retail environment as it now is under the regulated monopoly system. Concerns have emerged over the quality of service which rural areas could expect in a competitive marketplace where their highly diffused electrical loads are unlikely to prove attractive to competitive electrical providers. There is also the issue of the public service programs which utilities often provide their communities in exchange for their guaranteed service arrangements. Such programs as fuel subsidization for the needy and environmental improvement initiatives may not prove cost-efficient in a competitive marketplace. Legislators confront these and other issues as they consider retail wheeling proposals.

In 1997, South Carolina joined this public policy discussion with the introduction of several pieces of legislation which could have a profound impact on the state's electrical marketplace. H.3414 introduced by Representatives Doug Smith and Robinson provides for a gradual phase-in of retail wheeling in the state's electrical power market. The bill has received extensive study in the Public Utility Subcommittee of the House Labor, Commerce and Industry Committee which has involved expert testimony on the issues of nuclear decommission, tax implications, stranded costs, and rate or price impact. During the legislative interim, the subcommittee has held six public hearings across the state to hear and receive public comment from those residents who cannot readily attend meetings during the workday in Columbia. The purpose of these public hearings was to obtain information, comments, or suggestions from the electricity consuming public about South Carolina's utility providers, in general, and, more specifically, on the proposed changes that would occur if the retail electrical industry is restructured.

Other related legislative measures currently before the General Assembly include a joint resolution (H.3700) by Representative Ted Brown to establish a joint electric power deregulation study committee comprised of members of the General Assembly, and representatives from the general public, electric utility companies, and electric cooperatives. Senators Rose and Mescher have also introduced a proposal to restructure the electric industry (S.346) which has been referred to the Senate Judiciary Committee.

Currently, the Public Service Commission is in the process of preparing a report on the issue to the House of Representatives due January 31, 1998, as directed by Speaker of the House David H. Wilkins. During the summer, the PSC received comments or proposals from approximately thirty entities regarding the method of electric restructuring for South Carolina.

Health Insurance

During the 1998 legislative session, the General Assembly may focus attention on legislative initiatives which would afford certain medical specialties (dermatology, for example) direct access in the health insurance industry. Currently, a health insurance plan may opt to cover the treatment of medical specialists only when the insured has obtained a physician's referral for such specialized services. Direct access initiatives require health insurers to cover the treatment of certain medical specialists, without an initial doctor's referral. Several pieces of legislation are pending which would require health insurers to cover certain services in their health plans: certain social worker, psychiatric, and family therapists services (S.171); mammograms, pap smears, and prostate cancer screenings (H.3076); 48-hour hospitalization following a mastectomy (S.16/ H.3616). Additionally, S.310 provides for plan choice between managed care or indemnity policies to employees.

With improved technology, the medical community has made advances in detecting health risks through genetic testing. Senator Giese has sponsored S.535 to protect individuals from misuse of genetic information with regard to health insurance coverage and provide for the confidentiality of genetic information. This proposal requires insurance companies to treat all genetic information as confidential and specifies the only circumstances under which such information can be revealed. To ensure that persons can remain insured, the bill also prevents the use of the genetic tests and family history as a basis for restricting insurance coverage, thus insuring that basic health insurance remains available to that person. Among the concerns that this bill addresses:

1) That people are not finding out information through the use of genetic tests due to a fear that their health insurers will use the results of such tests to discriminate against them. Such avoidance of genetic testing might actually raise health care costs because it prevents early detection of some disorders and it causes people who may fear that they carry a harmful gene (but in fact do not) to get monitored too frequently.

2) That insurance companies are using speculative information based on genetic or inherited information to shut out the insured. As genetic information and ties to inherited characteristics become more known, such practices could create a large class of people that may be left without health insurance.

Legislators may also consider an "any willing provider" proposal. Under current law, a health insurer may refuse to cover the services of a physician who is not on the list of the health plan's contract providers. Under an "any willing provider" statute, a health insurer is required to cover the services of any physician, regardless of whether he is on the list of contract providers, so long as the physician offers services covered by the health care contract, at or below the contract price.

Consumer Finance

The General Assembly has also positioned itself to examine various consumer finance laws which are intended to protect the public. The Joint Committee to Study the Impact of the Restricted and Supervised Lenders has met during the legislative interim to prepare a report of suggested initiatives, to be presented to the General Assembly in January 1998. It is expected that the committee, comprised of House members, Senators, and agency officials, will make administrative recommendations to the Department of Consumer Affairs and Board of Financial Institutions.

One key issue which has been discussed not only at these meetings of the joint study committee, but also by members of the House, is mortgage guaranty insurance. In 1997, Representative Govan introduced H.4009 as a skeleton bill to be fleshed out at a later date via amendment. The language in the bill's title indicates that the legislation would apply to first mortgage loans on residential real property when the borrower is required to carry mortgage guaranty insurance as a condition of the loan. Under the measure, the mortgage broker, bank, or other lender is required to disclose to the borrower that the required mortgage guaranty insurance coverage may be terminated once the loan to value ratio is less than eighty percent. In other words, once the borrower has obtained equity equal to twenty percent of the amount borrowed, the lender would be required to notify the borrower that he/she is no longer required to carry mortgage guaranty coverage.

Other potential consumer issues for 1998 include legislative measures regulating the sale of guaranteed auto protection, commonly referred to as "gap" insurance. "Gap" insurance provides the auto buyer with protection from repaying the difference between the outstanding loan balance and the value of the automobile (which is lower), should the vehicle be destroyed prior to repayment of the purchase loan. During the 1998 session, there may be proposals to alter the current situation in which "gap" insurance is regulated by the Department of Insurance like all other insurance products.

Representative Law has prefiled H.4359, "The South Carolina Deferred Presentment Services Act" to provide comprehensive regulation of the check cashing industry. This bill establishes licensing and regulation under the State Board of Financial Institutions for those who offer deferred presentment services. Deferred presentment services involve accepting a fee in exchange for the service of accepting a dated check and holding that check for a period of time prior to presentment for payment or deposit. Among other restrictions, the bill sets a three hundred dollar limit on the amount of the check taken for deferred presentment (exclusive of fees); caps fees for presentment at fifteen percent of the face value of the check accepted; limits to thirty one days the amount of time a check may be held for deferred presentment; and, requires conspicuous posting of fees for deferred presentment services.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

Long Term Care Facility Caregivers

H.3309 (Rep. Neilson) and H.3331(Rep. Knotts) require criminal record checks for employees of nursing homes and home health care agencies. These bills make it a misdemeanor for anyone convicted of a crime against a person (i.e. murder, kidnaping, poisoning, etc.) or a crime against morality and decency (i.e. bigamy, adultery, prostitution) and other similar crimes to apply for employment or to be employed or contract as a direct care giver for a nursing home or a home health agency. Under H.3309, prospective employees and employees who have not been employed by or contracted with a nursing home or home health agency as a direct care giver for one year or more must undergo SLED (S.C. Law Enforcement Division) and FBI (Federal Bureau of Investigation) fingerprint criminal history checks. H.3331 requires current employees and job applicants to undergo a SLED name and social security number criminal history check.

Both bills are pending in 3M Social Services, Mental Health and Children's Affairs Subcommittee

Physical Therapy

H.3784 (Rep. Haskins) rewrites the practice act for physical therapists. Presently, physical therapists may not administer services without a patient first being seen by a licensed medical doctor or dentist, who writes a prescription for physical therapy. By rewriting the statutory definition of "physical therapy," this bill allows physical therapists to deliver services without a prescription. The bill requires a physical therapist to refer to a licensed medical doctor or dentist any patient whose medical condition is determined at the time of evaluation or treatment to be beyond the scope of practice of a physical therapist or whose medical condition does not improve after the initial treatment. The bill does not affect agreements which provide for insurance coverage for physical therapy only when a doctor or dentist prescribes such service.

Additional provisions of H.3784 make the practice act for physical therapists conform to the administrative framework established for all boards and commissions administered by the Department of Labor, Licensing, and Regulation (LLR).

H.3784 is pending action by full 3M Committee

WAYS AND MEANS

The 1998-99 Budget Outlook

As of November 10, 1997, the Board of Economic Advisors' (BEA) preliminary estimate of available recurring funds for 1998-99 is \$4,987,000,000. The appropriation/expenditure base from Fiscal Year 1997-98 is \$4,678,798,957. Thus, as of November 10, the total "new" base revenue for 1998-99 is \$308,201,043. This estimate does not include an Education Improvement Act (EIA) new funds estimate of \$25,022,164. Capital Reserve funds available for next year total \$86,919,822, and Fiscal Year 1997-98 surplus funds (this is a working estimate as of November 10, 1997) total \$61,201,043. The estimated total available revenue (recurring and non-recurring) for 1998-99 is \$456,321,908.

Based on the 1997-98 Appropriation Act and other acts passed during the 1997 legislative session, the estimated revenue loss, commitments, and possible annualizations for Fiscal Year 1998-99 total \$283,468,984. For purposes of this estimate, "annualizations" are defined as 1) items resulting in loss of revenue; 2) recurring items currently funded with non-recurring dollars; 3) items required by the constitution/statute to be funded at a level computed by a set formula; 4) items funded partially in Fiscal Year 1997-98 which have to be funded for a full year in Fiscal Year 1998-99; and 5) capital items with multi-year funding requirements.

Procedure for 1998-99 Budget Analysis

One of the provisos included in the 1997-98 Appropriation Act requires each state agency to submit its prior year annual accountability report to the Ways and Means Committee by November 1, 1997, for the purpose of a zero-based budget analysis. Objectives of this method of budget analysis include resolving the annualization problem; reducing government, where possible; reallocating resources to higher priorities; and achieving a new level of accountability for agency spending. Using information submitted by the agencies and other information, procedures which will be used by the Ways and Means Committee in developing the 1998-99 budget include identifying low-ranking programs of agencies; a 100% review of all 700+ base budget provisos of agencies; agency priority ranking; carry-forward funds analysis; a 100% review of administrative costs; and a review of fiscal reports and performance audits of agencies.

Higher Education Tuition Assistance

Rep. Billy Boan has introduced H.4370, which creates the *LIFE* (Legislative Incentives for Future Excellence) *Scholarship Program* (see summary of this bill in the "Prefiled Bills" section of this *Update*).

Through this legislation and perhaps other relevant legislation, there is a likelihood of activity during the 1998 legislative year towards increasing tuition assistance for South Carolina students. This subject also prompts discussion as to what might be the most appropriate funding mechanism if such assistance is offered.

Tax Relief

Homeowners' Property Tax Relief: Maintaining homeowners' property tax relief for those homes valued at less than \$100,000 for Fiscal Year 1998-99 will cost an estimated \$240 million, and will require an estimated additional \$30 million.

Automobile Property Tax Relief: This issue was raised by a senator during Conference Committee negotiations for the 1997-98 budget. Also, legislation has been prefiled which provides automobile tax relief. The estimated cost of abolishing property tax on automobiles for 1998 is \$450 million.

Additional Tax Relief for the Elderly: The Senate version of the 1997-98 budget bill included a permanent proviso which allowed a deduction in computing South Carolina taxable income for South Carolina taxable income received by a resident individual taxpayer who, before or during the applicable taxable year, has attained the age of sixty-five. The Senate's proviso further provided that for taxable year 1997 only, the maximum deduction allowed for these taxpayers would be \$11,500, reduced by the amount the taxpayer is eligible to deduct for that year, pursuant to South Carolina law. The final 1997-98 Appropriation Act amended the Senate's proviso to allow a maximum deduction of \$11,500 for these taxpayers (reduced by the amount the taxpayer is eligible to deduct pursuant to South Carolina law). This issue could be revisited during the 1998 legislative session.

South Carolina Economic Development Authority

H.3695 (Ways and Means Committee), which creates the South Carolina Economic Development Authority (the Authority), passed the House in 1997 and is on the Senate calendar for second reading, with three senators listed as "desiring to be present." The purposes of the Authority include promoting industrial development, private business, and commercial enterprise, international investment development, and the utilization and investment of capital in the state; assisting the development of existing state and interstate trade, commerce, and markets for South Carolina goods and in the removal of barriers to industrial, commercial, and agricultural development of South Carolina; assisting in ensuring employment stability and increase in employment opportunities for South Carolinians, and devising ways and means to raise the living standards of South Carolinians. The Authority

would be headed by a director who is appointed by and serves at the pleasure of the Governor. Employees of the Authority are not considered state employees except for eligibility for participation in the State Retirement System and the State Health Insurance Group plans. The bill empowers the SC Economic Development Authority to transfer to the Authority any of the functions, powers, and duties of the SC Department of Commerce that the Authority considers necessary to enhance the economic development and growth of the State.

OTHER ISSUES FOR 1998

Nuclear Waste Disposal

A possible issue for 1998 legislative action or discussion is Chem-Nuclear's proposal to generate a \$1 billion education trust fund for the state by selling space for decommissioned nuclear reactors, if the state will keep the landfill open for another twenty years with a lower tax on the waste.

Video Poker

Many legislators and their constituents have expressed concerns that this rapidly-expanding business is under-taxed and under-regulated. Proposals to ban video poker or to increase the taxes and license fees are likely to be debated by legislators when the General Assembly reconvenes. Also, the Department of Revenue (DOR) has promulgated regulations which, if enacted, would alter the video poker landscape in South Carolina. The proposed rules are designed to closely monitor the industry and to clarify state law concerning the location of the machines.

Current state law requires DOR to have a central computer monitoring system in place no later than December 31, 1998. Proposed *Regulation #2230* establishes standards for the system, which are designed to ensure that the games have a minimum payback of at least eighty percent and that the games are secure and accountable. State law also will require each machine in South Carolina to relay certain information to the system, including the amount of cash taken in and the number of credits won. The proposed regulations establish the technical standards for the video game machines to comply with the law and should help with enforcement of the \$125.00 limit on winnings from video poker during a 24 hour period.

Another DOR proposal, *Regulation #2248*, is designed to limit the number of machines in a single location. Current South Carolina law allows the operation of not more than five machines at "a single place or premises" and states that no machine may be licensed or relicensed "in any location where the *primary* and *substantial* portion of the establishment's gross proceeds" is from video gaming machines. The regulation seeks to clarify that the "primary and substantial portion" of the establishment's gross proceeds means fifty percent, after a federal court decided in 1993 that the phrase was unconstitutionally vague. The regulation would prohibit the operation of a business which conducts no substantial activity other than video poker.

DOR also is proposing *Regulation #2193* to ensure that no more than five video game machines are operating in a single place or premises. The proposal would prohibit each room where video poker is played from having a door or other entryway open to another area where the machines are located. This regulation would also require each single place or premises where video poker is played to be at least fifty feet from another room housing video poker games.

Legislators have 120 days to consider the regulations after they are submitted to the General Assembly. If no legislation is introduced to disapprove the regulations within the 120 day review period (or if no legislation is enacted to approve the regulations before the expiration of the review period), the regulations will be considered approved on the 120th day and effective upon publication in the *State Register*.

Many bills have been introduced which affect the video poker industry. Proposals to ban the activity, to increase the license fees for video poker operators, or to allow for the reinstatement of the ban on video poker in certain counties have been introduced this year (for a summary of these bills, see the pre-filed bill section of the Update).

PREFILED BILLS

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

H.4369 DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE Rep. Sheheen

The Southeast Interstate Low-Level Radioactive Waste Management Commission was created in 1982 to provide for the safe and efficient management of waste generated within the Southeastern region. The Commission was abolished by Act 145 of 1995. A Low-Level Radioactive Waste Compact Negotiating Committee was created to negotiate a new compact with states which have passed an act authorizing representatives to enter compact negotiations.

H.4369 abolishes the Low-Level Radioactive Waste Compact Negotiating Committee. This bill prohibits low-level radioactive waste that is generated in other states from being disposed of at a facility located in South Carolina.

EDUCATION AND PUBLIC WORKS

H.4346 GUIDELINES FOR SPECIAL LICENSE PLATES Rep. Stuart

This bill adds sections to the *South Carolina Code of Laws* providing that before the Department of Public Safety (DPS) produces and distributes a special license plate created by the General Assembly after January 1, 1998, DPS must receive 1) 400 prepaid applications for the plate or a deposit of \$4,000 from the individual or organization seeking issuance of the plate; and 2) a marketing plan for sale of the plate, which plan must be approved by DPS. The bill further

provides that if DPS receives less than 300 biennial applications and renewals for a particular special license plate, it shall not produce additional plates in that series.

This bill also provides that a school may request a change in the emblem, seal, or other symbol imprinted on the special plate once the existing inventory of the license plate has been exhausted. Current law provides that a school may request this change "not more than once every five years."

H.4348 REVISION OF MINIMUM AGE FOR SPECIAL IDENTIFICATION CARD Rep. Lloyd

This bill lowers to five years the minimum age required for a person to apply to the SC Department of Public Safety for a "special identification card." The current minimum age for application is ten years. A special identification card is similar in size, shape, and design to a driver's license, and includes a color photograph of the person to whom it is issued.

**H.4356 TRANSFER TO STATE HIGHWAY SYSTEM OF CERTAIN PORTIONS
OF SECONDARY HIGHWAYS IN McCORMICK COUNTY Rep. McAbee**

This bill removes from McCormick County and transfers to the State Highway System certain portions of secondary highways in McCormick County. The affected secondary highways are access roads to Savannah Lakes Village, a multimillion dollar development situated along Strom Thurmond Lake in McCormick County.

This bill also repeals *Act 219* of 1993, which removed from the state highway system one of the portions of highway mentioned in H.4356.

H.4383 SC CAMPUS SEXUAL ASSAULT INFORMATION ACT Rep. Cobb-Hunter

This bill adds a chapter to the *SC Code of Laws* requiring that each South Carolina institution of higher learning (defined as a public or private two-year or four-year college, community or junior college, technical school, or university) establish and implement a written campus sexual assault policy which includes a campus sexual assault program and which includes procedures to be followed once a sexual assault occurs. The bill also provides minimum areas that must be addressed in such a policy, including prevention and awareness education programs, possible sanctions following the final determination of an institutional disciplinary procedure, procedures a student follows if a sexual assault occurs, and procedures for institutional disciplinary action in cases of alleged sexual assault.

The bill requires that each institution of higher learning distribute to students, faculty and staff the written campus sexual assault policy, and the bill provides methods of distribution and requirements and methods for notifying students that the written policy is available. Additionally, the bill requires that the written policy must be made available to a student who reports being a victim of a sexual assault involving another student or occurring on campus, and the bill requires that each institution must make available to all students a description of jurisdiction, procedures, and time deadlines of institutional disciplinary procedures.

JUDICIARY

H.4347 CLAIM SETTLEMENTS Rep. Lloyd

This bill concerns the settlement of claims in favor of or against minors or incapacitated persons. Such claims over ten thousand dollars require court approval, while a conservator may petition the court to approve a settlement amounting to less than ten thousand dollars. This legislation clarifies that "court" means the circuit court of the county in which the minor or incapacitated person resides or in the county where the matter is pending.

H.4349 DEATH PENALTY VOTE BY JURY Rep. Haskins

Current law requires the twelve jurors in a death penalty case to unanimously agree to impose the death penalty. This bill would provide for the imposition of the death penalty if ten or more of the jurors voted in favor of the death penalty.

H.4350 MURDERING A LAW ENFORCEMENT OFFICER Rep. Davenport

This bill mandates the imposition of the death penalty for a person convicted of murdering a law enforcement officer in the line of duty.

H.4351 ARMED ROBBERY Rep. Klauber

Currently, a person who commits robbery while armed with a deadly weapon is guilty of a felony and, upon conviction, must be imprisoned for a minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted.

H.4351 provides that if the armed robbery occurs in a building (or part of a building) occupied as a retail establishment, or other business, including a convenience store or restaurant, the person who commits the armed robbery is guilty of a felony and, upon conviction, must be imprisoned not less than a mandatory minimum term of fifteen years or not more than thirty years, no part of which may be suspended or probation granted.

H.4352 PROHIBITION ON GAMBLING ADVERTISEMENT Rep. Hawkins

This bill states that is unlawful to publish in this State by print, sign, or electronic medium an advertisement promoting any form of gambling or lottery held in another state or jurisdiction if the gambling or lottery promoted is prohibited under the constitution or laws of this State. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than five thousand dollars.

H.4353 OPT-OUT PROVISION/UNIFORM SECURITIES ACT Rep. Klauber

The State's Uniform Securities Act regulates the sale of securities in the State and the registration statements, applications, and reports which certain entities are required to keep on file with the State's Securities Commissioner (the Attorney General).

Federal law (15 USCS § 80a-3a) exempts a charitable organization, or any trustee, director, officer, employee, or volunteer of a charitable organization acting within the scope of such person's duties from State registration requirements or State regulation. However, the federal law specifies that states may enact a statute (applying prospectively) providing that the federal law shall not preempt the State security laws which require such registration. This bill, in accordance with the federal

law, provides that the provisions of the South Carolina Uniform Securities Act may not be preempted by the federal Philanthropy Protection Act. The bill's effective date is December 1, 1998.

H.4355 LIQUOR LICENSES Rep. Fleming

This bill prohibits the issuance of a liquor license to a business within 300 feet of a child daycare facility in a municipality or to a business within 500 feet of a child daycare facility outside a municipality. Current law prohibits the issuance of a liquor license to a business within 300 feet of a church, school, or playground within a municipality or within 500 feet of such areas outside a municipality.

H.4357 IMMUNITY FOR COMPUTER ERROR Rep. Kirsh

For many years computer programmers conserved disc space by abbreviating the year to two digits (for example, using "98" instead of "1998"). When the calendar flips to the year 2000, the abbreviated dates will lead to serious problems with many computer calculations.

This bill provides that no cause of action may be brought against an immune contractor (a person or business which is an independent contractor with the State) or officer or employee of the State or any of its agencies or political subdivisions because a computer owned or operated by those persons or entities calculated an erroneous date. The bill also provides that any contract entered into by the State or its agents must include a provision that grants immunity to those persons or entities for any breach of contract caused by the erroneous date generated by the computer.

H.4360 SEXUALLY VIOLENT PREDATOR ACT Rep. Limehouse

This legislation creates a civil commitment procedure for the long-term care and treatment of sexually violent predators. A "sexually violent predator" is defined as a person who has been convicted or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence if the person is not confined in a secure facility.

The bill defines a number of crimes as "sexually violent offenses," including criminal sexual conduct (first, second or third degree), criminal sexual conduct with minors (first or second degree), engaging a child for sexual performance, promoting sexual performance by a child, assault with intent to commit sexual conduct, incest, buggery, and/or committing or attempting a lewd act upon a child under sixteen. Other crimes are listed as sexually violent offenses, including any offense for which the judge makes a specific finding that the offense should be included in that category.

Under the provisions of the bill, when a person has been convicted of a sexually violent offense, the agency with jurisdiction (for example, the Department of Corrections) must give notice to the Attorney General and the solicitor 90 days before the anticipated release from total confinement. The agency must give the required notice 90 days before the release of a person found guilty of a sexually violent offense but mentally ill, or before a hearing on a person's fitness to stand trial who has been found not guilty by reason of insanity of a sexually violent offense. The Board of Probation, Parole, and Pardon Services or the Board of Juvenile Parole must send notice of parole or conditional release to the Attorney General and the solicitor.

The Attorney General may file a petition within 75 days of the date the written notice was received

alleging that the person is a sexually violent predator. If the Attorney General does not file such a petition, the solicitor of the judicial circuit where the person committed the offense may file a petition within 76 days of the date the notice was received alleging that the person is a sexually violent predator.

After the petition is filed, a judge must determine whether probable cause exists to believe the person named in the complaint is a sexually violent predator. If the judge so determines, the person must be taken into custody. Within 72 hours after being taken into custody, the person must be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause that the detained is a sexually violent predator. The detained person has the right to be represented by counsel, present evidence, cross-examine witnesses, and view all petitions in the court file.

If the probable cause determination is made, the court must direct the person to be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The examination must be performed by a qualified professional.

The court must conduct a trial within 60 days after the completion of the hearing to determine whether the person is a sexually violent predator. The person, the Attorney General, or the solicitor may demand a trial by jury (such demand must be made at least four days before trial). If no demand is made, the trial is before the court. The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator.

A person determined to be a sexually violent predator must be committed to the custody of the Department of Mental Health (DMH) and segregated from other patients under the supervision of DMH. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person's release.

A person committed as a sexually violent predator must be examined yearly, and the court must conduct an annual review of the status of the committed person, at which time the person may petition the court for discharge (the committed person has the right to have an attorney represent him at this hearing but the person is not permitted to be present at the hearing). If the court determines that probable cause exists to believe the person is safe to be at large and will not engage in acts of sexual violence if discharged, then a hearing must be held on the issue. At the hearing, the committed person is entitled to be present, and the burden of proof is upon the State to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large.

This legislation tolls the statute of limitations for a crime victim who has a cause of action against the offender based upon the incident which made the person a victim. The statute of limitations for such cause of action expires three years after release from commitment. The act takes effect upon approval by the Governor and applies to all persons currently serving a sentence for a sexually violent offense as well as all persons who are convicted of a sexually violent offense in the future.

H.4362 *SERIOUS CHILD SEX OFFENSE* Rep. Hawkins

H.4362 defines a "serious child sex offense" as one of the following crimes: criminal sexual conduct in the first, second, or third degree, criminal sexual conduct with minors, attempted criminal sexual conduct, lewd act on a minor, disseminating obscene material to a minor under twelve years of age, sexual exploitation of a minor in the first, second, or third degree, promoting prostitution of a minor, and participating in prostitution of a minor.

The bill states that a person convicted of a serious sex offense who subsequently engages in an occupation or participates in a volunteer position that requires him to work or interact directly with children under age 16 is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.

Evidence that a person engages in an occupation or participates in a volunteer position in the following areas - teaching or coaching children, child care, youth counseling, youth organizations, parks or playground recreation, or school bus driving - is prima facie evidence that the occupation or position requires him to work or interact primarily and directly with children under age 16.

H.4368 *COIN OPERATED GAMING MACHINES* Rep. Sheheen

In 1993, the General Assembly enacted a statute which provided for a county-by-county referendum the following year to decide whether cash payouts for credits earned on coin operated video game machines would remain legal. The referendum resulted in a ban on video poker payouts in twelve South Carolina counties. When the statute was challenged in court, the State Supreme Court ruled that the optional ban on cash payouts violated the South Carolina Constitution, which prohibits legislation where the effect is to have different criminal laws in different counties.

H.4368 is a joint resolution proposing an amendment to the State Constitution to make the county by county referendum constitutional. The Constitution would be amended to allow the counties to ban video poker payouts after a referendum on the issue.

H.4374 *CANDIDATES FOR THE HOUSE AND SENATE* Rep. Cromer

This bill state that candidates seeking nomination for the South Carolina Senate or House of Representatives must file their statements of intention of candidacy with the county election commission. Currently, candidates file their statements of intention of candidacy with the executive committee of their respective party.

H.4376 *EARLY VOTING* Rep. Cromer

This legislation would allow a qualified voter to vote early by personal appearance in any statewide general election and in nominating primaries. A person would be required to apply to vote early in person at the county board of registration at the time when the person desires to vote. The period for early voting by personal appearance would begin on the fourteenth day before the election day and continue through 5:00 p.m. on the day immediately preceding the election day. The bill requires the State Election Commission to promulgate regulations concerning early voting.

H.4378 *MAGISTRATES COURT REFORM ACT* Rep. Wilkins

This comprehensive bill is known as the Magistrates Court Reform Act of 1998. The bill revises the way magistrates are selected and compensated and strengthens the educational requirements that magistrates must have.

Currently, the county governing body informs the Senators representing that county of the number and location of the magistrate positions available in the county and the work hours and compensation for the positions. The work hours, compensation, and work location must remain the same throughout the magistrate's term of office except for a change allowed by statute or authorized by the county governing body after a material change in conditions. This bill states that the S.C. Court Administration, after consulting with the county governing body, must inform the Senators of the magistrate positions available, as well as the work hours, compensation, and location of the positions. The Court Administration, rather than the governing body, could authorize a change in the magistrate's number of work hours, compensation, and work location.

H.4378 also includes many new educational requirements for magistrates. Currently, magistrates are required to have a high school education or the equivalent educational training (this requirement does not apply to a magistrate who had at least five years' service as a magistrate on January 1, 1989). Under the provisions of this bill, a magistrate who is appointed after July 1, 1998 must receive a two-year associate degree by May 1, 2002. A magistrate who is appointed to office after July 1, 1998, must receive a four-year baccalaureate degree by May 1, 2006. These requirements do not apply to a magistrate serving on July 1, 1998, during his tenure in office. In addition, a magistrate whose initial appointment begins on or after May, 1998 may not try a case until he has observed ten trials.

The bill also establishes an advisory council to make recommendations to the Supreme Court regarding the eligibility examination, certification examination, and continuing education requirements for magistrates. The S.C. Court Administration will administer an eligibility examination to test basic skills of persons seeking an initial appointment as magistrate on or after July 1, 1998. A senatorial delegation must use the results of these eligibility examinations to assist in its selection of nominees recommended to the Governor.

The bill also revises the pay structure for magistrates, who would be paid by the S.C. Court Administration. For those counties with a population of 150,000 and above, the base salary is sixty percent of a circuit judge's salary. For counties with a population between 50,000 and 149,000, the base salary is fifty percent of a circuit judge's salary. For those counties with a population of less than 50,000, the base salary is forty percent of a circuit court judge's salary. A county may increase the salary established for magistrates by requesting a reduction in the Aid to Subdivisions for that county in an amount to be remitted to the state's general fund and used for the salaries of magistrates in that county.

A salary schedule is implemented to determine a magistrate's annual compensation. Upon being appointed, a magistrate will be paid seventy percent of the base salary rate for his county's population category; after passing the certification examination and observing ten trials, a magistrate must be paid eighty percent of the base salary rate for his county's population category. After completing his second year in office, a magistrate will be paid 85 percent of the base salary rate for his county's population category; this figure rises to 90 percent after the completion of three years of service, and 100 percent after completion of four years of service. This new salary schedule would be effective January 1, 1999.

The bill also stipulates that part time magistrates who work 20 hours (but less than 55 hours) a week must receive 55 percent of a full-time magistrate's pay for that county. A magistrate who

works less than 20 hours a week must receive 30 percent of a full-time magistrate's pay for that county.

Currently the Code provides a ratio of one magistrate for every 28,000 persons in South Carolina. This bill provides a formula, based on the accommodations tax revenues collected by the counties, for the appointment of additional magistrates. For example, a county which collects accommodations tax revenues of \$500,000 to \$999,999 will get one additional appointment. At the highest range, four additional magistrates would be appointed for a county which collects accommodations tax revenues of \$5 million dollars and above.

Under the provisions of the bill, on or after January 1, 1999, magistrates would participate in the South Carolina Police Officers Retirement System. The bill also requests the Supreme Court to make a report to the chairmen of the House and Senate Judiciary Committees by March 15, 1999, with recommendations for additional changes in the magistrates court system. The act's effective date is July 1, 1998.

H.4379 RESTRUCTURING ACT AMENDMENTS Rep. Wilkins

This voluminous bill conforms language in several sections of the Code to the Restructuring Act. For example, references in several sections to the Tax Commission are changed to the Department of Revenue; references to the Department of Youth Services are changes to the Department of Juvenile Justice. The bill also cleans up and updates language in the Code. The bill is not designed to enact any substantive changes in law.

H.4384 MAGISTRATE'S JURISDICTION Rep. D. Smith

This bill clarifies that a magistrate has jurisdiction over all matters between landlord and tenant without regard to the amount claimed and, additionally, over matters concerning the possession of land.

LABOR, COMMERCE AND INDUSTRY

H.4354 APPOINTMENT OF MEMBERS OF THE STATE BOARD OF FINANCIAL INSTITUTIONS Rep. Cato

This bill revises the appointment process for members of the State Board of Financial Institutions so as to reflect the merger of the State Savings and Loan League with the South Carolina Bankers Association. The two member positions on the Board of Financial Institutions recommended by the former State Savings and Loan League are reassigned to the Bankers Association, raising the Association's total of recommendations from three to five.

H.4358 LICENSED PRACTICAL NURSES IN SCHOOL OR RESIDENTIAL SETTINGS Rep. Loftis

This bill provides that a licensed practical nurse may perform duties without the required supervision of a registered nurse, licensed physician, or licensed dentist in a residential setting under the Medicaid program (if a registered nurse has approved the plan of care), or in a public school (if the licensed practical nurse follows school guidelines and a registered nurse is available to be called for consultation).

H.4359 "SOUTH CAROLINA DEFERRED PRESENTMENT SERVICES ACT" Rep. Law

This bill establishes licensing under the State Board of Financial Institutions for those who offer deferred presentment services, and provides for the regulation of such services. Deferred presentment services (i.e. check cashing) involves accepting a fee in exchange for the service of accepting a dated check and holding that check for a period of time prior to presentment for payment or deposit. Among other restrictions, the bill sets a three hundred dollar limit on the amount of the check taken for deferred presentment (exclusive of fees); caps fees for presentment at fifteen percent of the face value of the check accepted; limits to thirty one days the amount of time a check may be held for deferred presentment; and, requires conspicuous posting of fees for deferred presentment services.

H.4375 SPECIALISTS IN SCHOOL PSYCHOLOGY Rep. Haskins

This bill provides for the licensure and regulation of specialists in school psychology under the State Board of Examiners in Psychology. The membership of the State Board of Examiners in Psychology is expanded to include one specialist in school psychology. An individual qualified on July 1, 1998, to practice as a specialist in school psychology must apply for licensure before October 1, 1998.

H.4377 SPECIALISTS IN SCHOOL PSYCHOLOGY Rep. Haskins

This bill provides for the licensure and regulation of specialists in school psychology under the renamed Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, Marital and Family Therapists, and Specialists in School Psychology. The membership of the Board is expanded to include one specialist in school psychology. An individual who is qualified to practice as a specialist in school psychology when the act goes into effect must apply for licensure before October 1, 1998.

H.4380 HOME-SERVICE DISTRIBUTION OF INSURANCE POLICIES Rep. Cobb-Hunter

This bill imposes certain reporting requirements on those who sell insurance policies through the home-service system of distribution. In home-service distribution arrangements, the seller generally markets the policy and collects the premiums in the purchaser's home or workplace. The bill defines as deceptive acts certain practices in which the insurer transfers premiums without the authorization of the policy owner.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.4364 KIDNEY DISEASE TREATMENT CENTERS Rep. Cato

Health care facilities must apply for a Certificate of Need from the Department of Health and Environmental Control (DHEC) before constructing a new facility or modifying an existing facility and before any expenditure or acquisition is made on behalf of a health care facility in excess of amounts prescribed by DHEC regulations. This bill amends the statutory definition of a health care facility to exclude kidney disease treatment centers, including free-standing hemodialysis and renal dialysis centers, from the Certificate of Need process.

H.4387 TESTING OF NEWBORNS FOR HIV Rep. J. Brown

This bill authorizes the Department of Health and Environmental Control (DHEC) to establish and carry out a comprehensive program to test newborns for the presence of the human immunodeficiency virus (HIV), or the presence of antibodies to such virus. The program would be funded through an annual state budget appropriation.

H.4381 TREATMENT OF PERPETRATORS OF DOMESTIC VIOLENCE Rep. Cobb-Hunter

The Battered Spouse State Plan identifies areas in the state in need of services for victims of family violence, their children, and perpetrators. The Department of Social Services (DSS) administers funds appropriated by the state legislature and the federal government to agencies and organizations that provide services for domestic violence to under served areas in the state.

To receive funds from DSS for treatment programs for *perpetrators* of domestic violence, **H.4381** makes it mandatory for agencies and organizations to comply with treatment program standards contained in the annual Battered Spouse State Plan. Among other mandates, the Battered Spouse Program standards require persons who provide treatment services to perpetrators to possess at least a master's degree. Additionally, the person who supervises paid and voluntary staff must hold a master's degree, have a minimum of three years of experience working with perpetrators and victims of domestic violence, and have a minimum of one year experience in group facilitation.

WAYS AND MEANS

H.4344 LIMITATION OF LOCAL BUSINESS LICENSE TAXES ON COIN-OPERATED MACHINES Rep. Walker

This bill amends Article 19 (*Coin-Operated Machines and Devices and Other Amusements*) of Chapter 21 of the *SC Code of Laws* so as to delete the limitation on local license tax levies against these businesses. The local levy is currently limited to \$12.50.

H.4345 VIDEO GAME MACHINES Rep. Walker

This bill repeals The Video Game Machines Act (Article 20, Chapter 21, Title 12 of the *SC Code of Laws*), an Act which provides requirements and limitations for licensing and operation of video games in South Carolina. The bill also repeals Section 16-19-60 (and also deletes a reference to the section) of the *SC Code of Laws*, which section provides that coin-operated nonpayout machines with free play feature are not illegal. Finally, the bill provides that, after the effective date of the bill, the South Carolina Department of Revenue, upon application, shall issue *pro rata* refunds of license fees for certain specified coin-operated devices or machines which are affected by the provisions of this bill.

H.4361 REVISION OF LOCATION RESTRICTIONS FOR CERTAIN COIN-OPERATED MACHINES Rep. Cromer

This bill revises the restrictions on the proximity of certain coin-operated machines to K-12 schools, colleges and universities, playgrounds and parks, public vocational or trade schools or technical educational centers, and houses of worship. Current law provides that these machines may not be located within 500 feet of these entities within a county and within 300 feet of these entities in a municipality. This bill provides that, after May 30, 1998, the machines may not be located within *one thousand* feet of these entities regardless of whether the machine is located in

a county or a municipality. This one thousand foot limitation does not apply to any location with machines licensed before June 1, 1998.

**H.4363 STATE HEALTH PLAN BENEFITS FOR TEMPORARY
STATE EMPLOYEES** Rep. Cobb-Hunter

This bill adds temporary state agency and institution employees to the list of those eligible to participate in the state health and dental insurance group plans if: A) the temporary employee is performing duties similar to those of agency permanent employees and at the time the temporary employee was hired the agency had an unfilled full-time equivalent position with a job description similar to the duties performed by the temporary employee; or B) the temporary employee has been employed by any state agency or agencies for a total of a year or more within the previous two years, regardless of whether or not it is uninterrupted employment. The bill also provides that temporary employees must meet all other plan document requirements for eligibility, and that no agency may discriminate in the hiring of a temporary employee on the basis of the employee's eligibility under the provisions of this bill.

**H.4365 REVISION OF THE MANNER IN WHICH BINGO IS LICENSED,
CONDUCTED, AND REGULATED** Rep. Sheheen

This bill amends the *SC Code of Laws*, Article 24, Chapter 21 of Title 12, also known as the *Bingo Tax Act of 1996*. This Article, relating to the regulation of bingo games, became effective on October 1, 1997. The Article currently provides, among other items, that the game of bingo is not a lottery if it is conducted under specified conditions by certain charitable, religious, or fraternal nonprofit organizations, or by certain annual state or county fairs. **H.4365** amends the Article so as to provide that the game of bingo is a lottery *unless* the game is conducted by a religious organization.

The bill also provides that a religious organization which obtains a license to operate a game of bingo may not employ a promoter or agent to manage, operate, or conduct the game, and requires that at least ninety percent (current law requires fifty percent) of the gross proceeds of the sale of bingo cards taken in by the house during a single session must be returned to the players in the form of prizes. Also, a religious organization may not operate or cause the operation of bingo outside the county in which it maintains a church facility and each church facility may operate or cause the operation of only one game of bingo.

The bill allows only a "Class E" license, which authorizes the holder to impose a five dollar entrance fee. The entrance fees collected would not be required to be remitted as taxes and would not be included in gross proceeds for purposes of the prize limitations provided under current law. The bill also reduces the penalty for violation of the Article from a maximum of Five Thousand Dollars and license revocation at the discretion of the Department of Revenue, to a maximum of Five Hundred Dollars and license revocation at the discretion of the Department of Revenue.

**H.4366 COUNTY/MUNICIPAL "ADD ON" LICENSE FEES ON COIN-OPERATED
DEVICES WITH A FREE PLAY FEATURE** Rep. Knotts

This bill amends *Section 12-21-2720* of the *SC Code of Laws*, which section allows a municipality or a county, by ordinance, to impose a license fee on these coin-operated machines in an amount "not exceeding ten percent of three thousand six hundred dollars of the license fee...." This bill strikes the words "three thousand six hundred dollars" so that the ten percent "add on" fee applies

to the entire amount of the biennial state license tax (currently Four Thousand Dollars) rather than applying to three thousand six hundred dollars.

**H.4367 PROPOSED CONSTITUTIONAL AMENDMENT CONCERNING
LOTTERIES/BINGO** Rep. Sheheen

The *SC Constitution* currently provides that lotteries are not allowed to be conducted or advertised (nor may lottery tickets be sold) in South Carolina, and that the game of bingo is considered a lottery *unless it is conducted by charitable, religious or fraternal organizations exempt from federal income tax, or when conducted at recognized annual State and county fairs*. This joint resolution proposes an amendment to the Constitution that, if ratified, would make the game of bingo a lottery if conducted by *any entity other than a religious organization*.

**H.4370 LEGISLATIVE INCENTIVES FOR FUTURE EXCELLENCE (LIFE)
SCHOLARSHIPS** Rep. Boan

This bill adds a chapter to the *SC Code of Laws*, establishing the *Legislative Incentives for Future Excellence (LIFE) Scholarship*. The bill provides that these merit-based scholarships will be offered by the State to pay the cost of attendance (tuition, fees, room, board, and books), up to a maximum of \$2,000 a year, to eligible South Carolina resident students attending eligible, public four-year South Carolina colleges and universities, and to cover the cost of attendance up to \$1,000 a year for these students to attend public or independent two-year South Carolina colleges or universities and technical colleges.

Requirements for scholarship eligibility include: 1) admission to an eligible institution as a full-time, degree-seeking undergraduate student; 2) for a freshman year scholarship, the student must graduate from high school with a minimum of a cumulative 3.0 grade average on a 4.0 scale, and a score of 1000 or higher on the Scholastic Aptitude Test (SAT) or the equivalent ACT score beginning with school year 1998-99, 1050 beginning with school year 2000-2001, and 1100 beginning with school year 2002-2003. If the student is to attend an eligible public or independent two-year institution (including a technical college), the SAT requirement does not apply. If a student wants to attend an eligible four-year institution and does not have the required SAT score, that student may earn a merit-based scholarship after his freshman year if he meets grade point average and semester credit hour requirements which are specified in the bill. Students who were merit-scholarship recipients at eligible four-year institutions during their freshman year who did not earn the specified grade point average (3.0 with a 30 hour course load) may regain eligibility if their cumulative grade point average is a 3.0 at the end of the term they have attempted at least sixty hours if they are a sophomore or ninety hours if they are a junior. By the year 2000, new recipients must have passed all college board recommended courses in high school in order to be eligible for these scholarships.

In order to receive the scholarship, a student must enroll in an eligible institution within two years of graduating from high school, and may receive the scholarship for a maximum of ten semesters for a five-year degree program, eight semesters for a four-year degree program, or four semesters for a two-year degree program. Other provisions of the bill include: 1) student must not be in default or owe a refund on a Federal Title IV or State of South Carolina educational loan; 2) student may transfer from one eligible institution to another if he continues to meet eligibility requirements; 3) student must not have been convicted or pled *nolo contendere* to any felony; 4) student is eligible for this funding assistance for a bachelor's degree and may not receive this assistance to seek another degree, regardless of the number of hours attempted; 5) students who earn the *LIFE*

scholarship or the Palmetto Fellows Scholarship will be recognized at high school graduation with a certificate; 6) a student enrolled in an eligible institution may continue to qualify for the scholarship even though he may not be physically present in South Carolina during any or all of the term to which the scholarship applies, provided the student's institution approves for credit a study-abroad or out-of-state program. Summer school may be substituted for one fall or spring semester in any year in a planned program of study; 7) credit hours earned before high school graduation, exempted by examination, or advanced placement credit hours do not count against the semester limits of the scholarship program; 8) merit-based scholarship funds may not be applied to continuing education courses.

H.4371 MUSC Rep. Seithel

This bill repeals sections of the *SC Code of Laws* (and sections of *Act 390* of 1996), which authorize the Medical University of South Carolina to lease its medical center facilities to a private enterprise.

H.4372 "MOTOR VEHICLE PROPERTY TAX RELIEF FUND" Rep. Cromer

This bill provides a property tax exemption for a percentage of the fair market value of private passenger motor vehicles, motor cycles, and trucks with an empty weight of not more than 5,000 pounds. The bill also increases the state sales, use, and casual excise tax from five percent to six percent on items not subject to a maximum tax, and credits the resulting revenue to the "Motor Vehicle Property Tax Relief Fund." Monies in this fund are to be used to reimburse local property taxing entities for revenues not collected because of the exemption. Amounts accumulated in this fund in excess of amounts required for reimbursements must be credited to the State General Fund. The bill also provides for calculation of the exemption amount and for the method of reimbursement to local taxing entities for revenues not collected because of this exemption.

H.4373 JOCASSEE GORGES ENDOWMENT FUND Rep. Trotter

This bill adds sections to the *SC Code of Laws* creating the South Carolina Jocassee Gorges Endowment Fund, the income and principal of which must be used only for the purposes of supporting the operation and maintenance and the acquisition of additional real property complementary to tracts of property owned by the Department of Natural Resources and known as Jocassee Gorges. The bill also creates a Board for the Endowment Fund and provides for the Board's membership and authority and for limitations and restrictions on expenditures from the Fund. The bill provides that assets for the Fund are derived from the proceeds of any gifts, grants, and contributions to the State which are designated specifically for inclusion, and from other lawful sources.

H.4382 SERVICE CREDIT UNDER SC RETIREMENT SYSTEM Rep. Cobb-Hunter

This bill amends sections of the *SC Code of Laws* relating to establishing service credit under the SC Retirement System and the SC Police Officers' Retirement System. The bill deletes the requirement that the employer share of the cost of establishing military service be assumed by the state and instead requires the employer payment to be made by the *current employer* of the member establishing the service.

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